

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

WASTE ACTION PROJECT,

Plaintiff,

v.

PERDUE FOODS LLC d/b/a DRAPER  
VALLEY FARMS,

Defendant.

CASE NO. C20-0836-JCC

STIPULATED PROTECTIVE  
ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. “CONFIDENTIAL” MATERIAL

“Confidential” material shall include the following documents and tangible things produced or otherwise exchanged: documents and communications containing non-public information that is proprietary, confidential, or sensitive, including but not limited to information concerning the amounts, formulations, and concentrations of food safety chemicals, interventions and/or measures employed by Perdue Foods to comply with food safety requirements.

3. SCOPE

The protections conferred by this agreement cover not only confidential material (as defined above), but also (1) any information copied or extracted from confidential material; (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony, conversations, or presentations by parties or their counsel that might reveal confidential material.

However, the protections conferred by this agreement do not cover information that is in the public domain or becomes part of the public domain through trial or otherwise, unless such information enters the public domain as a result of a breach of this protective order.

4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

4.1 Basic Principles. A receiving party may use confidential material that is disclosed or produced by another party or by a non-party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Confidential material may be disclosed only to the categories of persons and under the conditions described in this agreement. Confidential material must be stored and maintained by a receiving party at a location and in a secure manner that ensures that access is limited to the persons authorized under this agreement.

4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by the court or permitted in writing by the designating party, a receiving party may disclose any confidential material only to:

(a) the receiving party’s counsel of record in this action, as well as employees of counsel to whom it is reasonably necessary to disclose the information for this litigation;

1 (b) the officers, directors, and employees (including in house counsel) of the  
2 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties  
3 agree that a particular document or material produced is for Attorney's Eyes Only and is so  
4 designated;

5 (c) experts and consultants to whom disclosure is reasonably necessary for this  
6 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

7 (d) the court, court personnel, and court reporters and their staff;

8 (e) copy or imaging services retained by counsel to assist in the duplication of  
9 confidential material, provided that counsel for the party retaining the copy or imaging service  
10 instructs the service not to disclose any confidential material to third parties and to immediately  
11 return all originals and copies of any confidential material;

12 (f) during their depositions, witnesses in the action to whom disclosure is  
13 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"  
14 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of  
15 transcribed deposition testimony or exhibits to depositions that reveal confidential material must  
16 be separately bound by the court reporter and may not be disclosed to anyone except as permitted  
17 under this agreement;

18 (g) the author or recipient of a document containing the information or a  
19 custodian or other person who otherwise possessed or knew the information;

20 (h) a third party neutral for confidential proceedings.

21 4.3 Filing Confidential Material. Before filing confidential material or discussing or  
22 referencing such material in court filings, the filing party shall confer with the designating party,  
23 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will  
24 remove the confidential designation, whether the document can be redacted, or whether a motion  
25 to seal or stipulation and proposed order is warranted. During the meet and confer process, the  
26 designating party must identify the basis for sealing the specific confidential information at issue,

1 and the filing party shall include this basis in its motion to seal, along with any objection to sealing  
2 the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and  
3 the standards that will be applied when a party seeks permission from the court to file material  
4 under seal. A party who seeks to maintain the confidentiality of its information must satisfy the  
5 requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal.  
6 Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with  
7 the strong presumption of public access to the Court's files.

8 5. DESIGNATING PROTECTED MATERIAL

9 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party  
10 or non-party that designates information or items for protection under this agreement must take  
11 care to limit any such designation to specific material that qualifies under the appropriate  
12 standards. The designating party must designate for protection only those parts of material,  
13 documents, items, or oral or written communications that qualify, so that other portions of the  
14 material, documents, items, or communications for which protection is not warranted are not swept  
15 unjustifiably within the ambit of this agreement.

16 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
17 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to  
18 unnecessarily encumber or delay the case development process or to impose unnecessary expenses  
19 and burdens on other parties) expose the designating party to sanctions.

20 If it comes to a designating party's attention that information or items that it designated for  
21 protection do not qualify for protection, the designating party must promptly notify all other parties  
22 that it is withdrawing the mistaken designation.

23 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
24 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or  
25 ordered, disclosure or discovery material that qualifies for protection under this agreement must  
26 be clearly so designated before or when the material is disclosed or produced.

1 (a) Information in documentary form: (e.g., paper or electronic documents and  
 2 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),  
 3 the designating party must affix the word “CONFIDENTIAL” to each page that contains  
 4 confidential material. If only a portion or portions of the material on a page qualifies for protection,  
 5 the producing party also must clearly identify the protected portion(s) (e.g., by making appropriate  
 6 markings in the margins).

7 (b) Testimony given in deposition or in other pretrial proceedings: the parties  
 8 and any participating non-parties must identify on the record, during the deposition or other pretrial  
 9 proceeding, all protected testimony, without prejudice to their right to so designate other testimony  
 10 after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the  
 11 transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or  
 12 exhibits thereto, as confidential. If a party or non-party desires to protect confidential information  
 13 at trial, the issue should be addressed during the pre-trial conference.

14 (c) Other tangible items: the producing party must affix in a prominent place  
 15 on the exterior of the container or containers in which the information or item is stored the word  
 16 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,  
 17 the producing party, to the extent practicable, shall identify the protected portion(s).

18 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
 19 designate qualified information or items does not, standing alone, waive the designating party’s  
 20 right to secure protection under this agreement for such material. Upon timely correction of a  
 21 designation, the receiving party must make reasonable efforts to ensure that the material is treated  
 22 in accordance with the provisions of this agreement.

## 23 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

24 6.1 Timing of Challenges. Any party or non-party may challenge a designation of  
 25 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality  
 26 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic

1 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
2 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
3 original designation is disclosed.

4 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute  
5 regarding confidential designations without court involvement. Any motion regarding confidential  
6 designations or for a protective order must include a certification, in the motion or in a declaration  
7 or affidavit, that the movant has engaged in a good faith meet and confer conference with other  
8 affected parties in an effort to resolve the dispute without court action. The certification must list  
9 the date, manner, and participants to the conference. A good faith effort to confer requires a face-  
10 to-face meeting or a telephone conference.

11 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court  
12 intervention, the designating party may file and serve a motion to retain confidentiality under Local  
13 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
14 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those  
15 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on  
16 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain  
17 the material in question as confidential until the court rules on the challenge.

18 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
19 LITIGATION

20 If a party is served with a subpoena or a court order issued in other litigation that compels  
21 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party  
22 must:

23 (a) promptly notify the designating party in writing and include a copy of the  
24 subpoena or court order;

1 (b) promptly notify in writing the party who caused the subpoena or order to  
2 issue in the other litigation that some or all of the material covered by the subpoena or order is  
3 subject to this agreement. Such notification shall include a copy of this agreement; and

4 (c) cooperate with respect to all reasonable procedures sought to be pursued by  
5 the designating party whose confidential material may be affected.

6 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

7 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential  
8 material to any person or in any circumstance not authorized under this agreement, the receiving  
9 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,  
10 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the  
11 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,  
12 and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be  
13 Bound” that is attached hereto as Exhibit A.

14 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
15 MATERIAL

16 When a producing party gives notice to receiving parties that certain inadvertently  
17 produced material is subject to a claim of privilege or other protection, the obligations of the  
18 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision  
19 is not intended to modify whatever procedure may be established in an e-discovery order or  
20 agreement that provides for production without prior privilege review. The parties agree to the  
21 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

22 10. NON TERMINATION AND RETURN OF DOCUMENTS

23 Within 60 days after the termination of this action, including all appeals, each receiving  
24 party must return all confidential material to the producing party, including all copies, extracts and  
25 summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.  
26

1 Notwithstanding this provision, counsel are entitled to retain one archival copy of all  
2 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,  
3 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work  
4 product, even if such materials contain confidential material.

5 The confidentiality obligations imposed by this agreement shall remain in effect until a  
6 designating party agrees otherwise in writing or a court orders otherwise.

7  
8 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

9 DATED: September 8, 2021

s/ Marc Zemel (with consent)

Attorneys for Plaintiff

10  
11 DATED: September 8, 2021

s/ Veronica M. Keithley

Attorneys for Defendant

12  
13 PURSUANT TO STIPULATION, IT IS SO ORDERED

14 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any  
15 documents in this proceeding shall not, for the purposes of this proceeding or any other federal or  
16 state proceeding, constitute a waiver by the producing party of any privilege applicable to those  
17 documents, including the attorney-client privilege, attorney work-product protection, or any other  
18 privilege or protection recognized by law.

19  
20 DATED this 9th day of September 2021.

21  
22  
23  
24 

25 JOHN C COUGHENOUR  
United States District Court Judge



EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under penalty of  
perjury that I have read in its entirety and understand the Stipulated Protective Order that was  
issued by the United States District Court for the Western District of Washington on [date] in the  
case of \_\_\_\_\_ **[insert formal name of the case and the number and initials  
assigned to it by the court]**. I agree to comply with and to be bound by all the terms of this  
Stipulated Protective Order and I understand and acknowledge that failure to so comply could  
expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will  
not disclose in any manner any information or item that is subject to this Stipulated Protective  
Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the  
Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective  
Order, even if such enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_